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10/069,911	07/08/2002	John Misselbrook	BKG P-02-001	7093

7590 07/02/2003

Patents TMS  
Professional Corporation  
1914 North Milwaukee Avenue  
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EXAMINER

CLARDY, S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 07/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/069,911

Applicant(s)

Misselbrook

Examiner

S. Mark Clardy

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Jul 25, 2002
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
- ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

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Claims 1-32 are pending in this application which has been filed under 35 USC 371 as a national stage application of PCT/GB00/03307, filed August 25, 2000. This application possesses unity of invention under 37 CFR 1.475 (MPEP 1850, 1893.03(d)).

Applicant's claims are drawn to water dispersible (WD) agrochemical compositions comprising

- a) a primary agrochemical agent (at less than 50%)<sup>1</sup>,
- b) a dispersing agent<sup>2</sup>,
- c) an optional secondary high use rate agrochemical agent (at least 50%)<sup>3</sup>.

Applicant's examples provide data for compositions comprising chlorsulfuron, bensulfuron, and bensulfuron + propanil.

Claim 22 is objected to under 37 CFR 1.75© as being in improper form because a multiple dependent claim may not depend from another multiply dependent claim, i.e., claim 20. See MPEP § 608.01(n). Accordingly, the claim 22 has not been further treated on the merits.

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<sup>1</sup>Claim 3, sulfonylurea herbicides: bensulfuron, chlorsulfuron, cinosulfuron, metsulfuron, nicosulfuron, primisulfuron, rimsulfuron, sulfometuron, thifensulfuron, triflusaluron

<sup>2</sup>Claim 14: lignosulfonates, naphthalene sulfonate formaldehyde condensates, tristyrylphenol ethoxylate phosphate esters, aliphatic alcohol ethoxylates, alkylphenol ethoxylates, EO/PO block copolymers, comb graft copolymers, polyvinyl alcohol - vinyl acetate copolymers.

<sup>3</sup>Claim 10: abamectin, atrazine, benomyl, bentazone, bifenox, bromoxynil, captan, carbendazim, chloridazon, chlorothalonil, chlortoluron, lambda-cyhalothrin, cyhexatin, cymoxynil, alpha-cypermethrin, deltamethrin, dimethomorph, diuron, ethofumesate, fipronil, flurtamone, glyphosate, imazamethabenz, imazapyr, imazethapyr, imidacloprid, isoproturon, linuron, mancozeb, maneb, metamitron, methiocarb, metribuzin, milbectin, oxadixyl, oxyfluorfen, phenmedipham, propanil, propyzamide, simazine, thifensulfuron, thiram.

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Claim 19 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 1. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k). Claims 1 and 19 are composition claims, with claim 19 merely adding how the composition is used. End use does not further limit a composition claim, thus claim 19 is a duplicate.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3, 10, and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Several pesticide names are misspelled in claim 3 (primisulfuron, thifensulfuron, triflusulfuron) and claim 10 (benomyl, bentazone, bifenox, lambda-cyhalothrin, dimethomorph, ethofumesate, fipronil, imidacloprid, metamitron).

Claim 16 is dependent on itself.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 1-21 and 23-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of Geigle et al (US 5,372,989) and Hacker et al (US 6,492,301).

Geigle et al teach water dispersible granular (WDG) compositions comprising pesticidal particles bonded together by a water soluble heat-activated binder (abstract). The pesticidal particles comprise 5 to 95% of the composition (col 1, lines 41-43). Conventional WDG compositions may be made by various means known in the art (column 2), and may be a mix of two or more pesticides, taking into account incompatibility issues (col 2, lines 42-58). In the WDG compositions of Geigle et al, incompatibility problems are avoided by incorporating the heat activated binder (HAB) into the compositions (columns 2-3). Several of applicant's recited herbicides, such as sulfonylureas, are included in Table 1 (columns 4-6). Among the surface active agents used in the compositions are several of applicant's dispersants (column 11): polyethoxylated alkylphenols, EO/PO block copolymers, sodium naphthalene sulfonate formaldehyde condensates, lignosulfonates.

Hacker et al teach the utility of combining (A) sulfonylurea herbicides (column 5), with (B) additional herbicidal agents (columns 10-34, 46-48). Application rates for the sulfonylurea components range from 0.1 to 10 g ai/ha (col 35, lines 5-15), with the (B) component application rate significantly higher (up to 5000 g ai/ha; columns 35-37; see also the combinations in columns 37-45). The active agent components comprise from 10 to 90% of the WDG compositions (col 50, lines 54-56). Thus, in most instances, the sulfonylurea component would comprise <50%, and the secondary herbicide would comprise >50% of the composition. Surface active agents used in wettable powder compositions include polyethoxylated alkylphenols, polyethoxylated fatty

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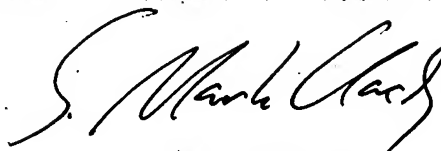
alcohols, alkylarylsulfonates, and sodium lignosulfonate (col 49, lines 57-67); one WDG example comprises 75 parts active agents, and 10 parts calcium lignosulfonate (col 92, lines 65-67).

One of ordinary skill in the art would be motivated to combine these references because they disclose the combination of sulfonylurea herbicides with additional herbicidal agents in WDG formulations.

Thus it would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to have combined <50% of a primary agrochemical, a dispersing agent, and >50% of an optional secondary active agent in a single agrochemical formulation because the prior art teaches that in various conventional herbicidal formulations, e.g., water dispersible granules, it is known to combine active agents at high rates (up to 95%) with dispersing agents (Geigle et al), and that secondary herbicides may also be included. Hacker et al teach that it was known to combine herbicidal components with significantly different application rates (and thus significantly different concentrations) in a single WDG formulation.

No unobvious or unexpected results are noted; no claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to S. Mark Clardy whose telephone number is (703) 308-4550.



S. Mark Clardy  
Primary Examiner  
AU 1616

June 27, 2003